International Association of Bridge, Structural and Ornamental Iron Workers, Local 395 *and* Service Contracting, Inc. *and* Northwest Indiana District Council of Carpenters, AFL–CIO, United Brotherhood of Carpenters and Joiners of America. Case 13–CD–523

August 27, 1996

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS BROWNING, COHEN, AND FOX

The charge in this 10(k) proceeding was filed on December 6, 1995, by the Employer, Service Contracting, Inc., alleging that the Respondent, International Association of Bridge, Structural, and Ornamental Iron Workers, Local 395 (Iron Workers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Northwest Indiana District Council of Carpenters, AFL–CIO, United Brotherhood of Carpenters and Joiners of America (Carpenters). The hearing was held on January 25, 1996, before Hearing Officer William M. Belkov. No briefs were filed by any of the parties.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Service Contracting, Inc., a Michigan corporation, is engaged in the business of remodeling scoreboards and outdoor bleachers, with a principal place of business currently in Holland, Michigan. The parties stipulated that the Employer does work at various construction sites in Hammond, Indiana, and that during the 12 months prior to the hearing the Employer purchased and received, at its Northern Indiana sites, goods and materials valued in excess of $50,000 from points located outside the State of Indiana. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties stipulated, and we find, that the Iron Workers and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer is a contractor specializing in remodeling scoreboards and outdoor bleachers. The Employer obtained a job from the city of Hammond's school system to perform the remodeling of outdoor bleachers at Gavitt High School in Hammond, Indiana. The Employer and the Northwest Indiana District Council of Carpenters entered into a ''project agreement only for work to be performed at the Hammond School City.'' On December 6, 1995, Iron Workers Business Agent James Stemmler, accompanied by several individuals whom Stemmler identified at the hearing as Iron Workers, arrived at the jobsite. Stemmler threatened to line the football field with picketers and shut down the job, unless the parties met to discuss the assignment of the work. Thereafter, the iron workers who had accompanied Stemmler sat on the recently delivered work material. As the carpenters worked, the iron workers undid the work and threw the materials onto the stadium field. The police were called to the jobsite and they informed Stemmler that he was trespassing. At that point Stemmler and the individuals who had accompanied him left the property and did not return.

B. *Work in Dispute*

The disputed work is the remodeling, including ''replanking,'' of the outdoor bleachers at the Gavitt High School located in Hammond, Indiana.

C. *Contentions of the Parties*

As stated, none of the parties in this proceeding filed briefs. At the hearing, the parties stipulated that there were competing claims to the work in dispute and that there is no agreed-upon method for voluntary adjustment of the work dispute which would bind all parties.

The Employer and the Carpenters, in essence, argued that the dispute is properly before the Board and that the work should be awarded to employees represented by the Carpenters.

Despite the stipulation that both the Iron Workers and the Carpenters claim the work, at the hearing the Iron Workers implicitly contended that there is no dispute properly before the Board. Iron Workers Business Agent Stemmler testified that he merely wanted all the parties to discuss the work assignment and resolve it. Finally, if the Board finds that a 10(k) proceeding has been triggered, the Iron Workers argued that the proper assignment of the work is to employees represented by Iron Workers.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, that there are competing claims to the disputed work by rival groups of employees, and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

We find that there are competing claims for the work and that a jurisdictional dispute exists. Iron Workers Business Agent Stemmler's statements and actions indicated that the Iron Workers sought to have employees represented by that Union perform the work. Stemmler admitted that he told the Carpenters' union steward at the jobsite that the issue could be resolved either ''the easy way'' or the ''hard way'' and that the only way available to him was a picket line. He also testified that he told the iron workers with him to sit on the work material when it was unloaded from the truck. Stemmler threatened to line the field with picketers and to shut the job down. Further, the iron workers accompanying Stemmler engaged in coercive conduct to protest the work being performed by other employees. Based on these statements and actions, we conclude that an object of the Iron Workers was to force the Employer to assign the disputed work to employees represented by the Iron Workers.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that, as stipulated, there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The parties stipulated that neither union has been certified by the Board as the bargaining representative of the employees performing the disputed work. Consequently, Board certifications are not a factor in resolving this dispute.

As noted, the Employer and the Northwest Indiana District Council of Carpenters have a ''project agreement only for work to be performed at the Hammond School City.'' By its terms, this agreement adopts ''the latest Agreement . . . between the UNION and the CALUMET BUILDERS ASSOCIATION, INC. (AGC) AND THE INDUSTRIAL CONTRACTORS AND BUILDERS ASSOCIATION OF INDIANA, INC.'' Before the Board can attach any weight to collective-bargaining agreements it must have copies of such agreements before it. Because the project agreement between the Employer and the Carpenters relies, for its substantive effect, on an agreement not in evidence, we have no basis for determining whether the Employer and the Carpenters have an agreement that would cover the work in dispute. See *Teamsters Local 505 (Sandblasting Co.)*, 240 NLRB 960 (1979); and *Electrical Workers Local 211 (United Technicians)*, 276 NLRB 512, 514 fn. 9 (1985). Accordingly, we are unable to rely on contractual considerations in determining this work dispute.[1]

2. Employer past practice

The Employer has in the past assigned work of the kind in dispute to employees represented by the Carpenters on one occasion and by the Iron Workers on another occasion. Thus, we find that the factor of Employer past practice does not favor an award to either group of employees.

3. Employer preference

The Employer assigned the work in dispute to, and prefers that it be performed by, employees represented by the Carpenters. We find that the factor of Employer preference favors awarding the work in dispute to employees represented by the Carpenters.

4. Area and industry practice

Employees represented by the Iron Workers have done the work in dispute, or similar work, on four projects in the area (excluding the project for the Employer), but at least one of these projects was done 4 or 5 years before the hearing. Carpenter-represented employees previously performed this type of work in the area for the Employer.

The Carpenters introduced into evidence several letters assigning the installation of stadium and auditorium seating to the Carpenters. It is not clear that all of this work is identical to the work in dispute. The Iron Workers also introduced a letter dated November 15, 1991, assigning similar work to the Iron Workers rather than to the Laborers or the Carpenters.

As evidence of industry practice, the Iron Workers introduced an arbitration award involving installation of aluminum seat planks at the University of Missouri, Memorial Stadium. In that proceeding the arbitrator awarded the work to another Iron Workers Local, rely-

[1] Contrary to her colleagues, Member Browning would find that the project agreement between the Employer and Carpenters favors an assignment of the disputed work to employees represented by Carpenters. The project agreement was introduced into evidence, and by its very nature it specifically covers the work in dispute because it is limited to the performance of that work. *Teamsters Local 505 (Sandblasting Co.)*, supra, and *Electrical Workers Local 211 (United Technicians)*, supra, relied on by her colleagues for a neutral result, are distinguishable, because in this case only the Carpenters have made a contractual claim for the disputed work.

ing on 10 decisions rendered by the National Joint Board for Settlement of Jurisdictional Disputes Building and Construction Industry. The Carpenters also introduced a Joint Board decision, dated March 13, 1969, regarding ''over rigging and erecting precast concrete coliseum seat risers.''[2]

As the arbitrator in the award introduced by the Iron Workers relied on the Joint Board's decisions in making his award determination, and as we are unable to determine from the Joint Board's documents introduced by the Unions what evidence was presented to the Joint Board, we cannot evaluate either the award or the Joint Board's decisions according to our standards to determine the degree of deference to which they are entitled. See *Laborers Local 320 (Northwest Metal Fab & Pipe)*, 318 NLRB 917, 919 (1995).

The varying evidence regarding area and industry practice is inconclusive. In regard to area practice, some evidence does not clearly involve the same work as the work in dispute; moreover, both groups have performed the work in the jurisdictional area. Much of the evidence regarding industry practice appears outdated[3] and in any event suggests that employees represented by both Unions have performed the work. Accordingly, we find that this factor does not favor awarding the work in dispute to either group of employees.

5. Relative skills

Employees represented by the Iron Workers and Carpenters are both capable of performing the disputed work. We find that this factor does not favor awarding the work in dispute to either group of employees.

6. Economy and efficiency of operations

The record contains no evidence that would support a finding that the Employer would experience greater economy and efficiency of operations by using one group of employees rather than the other. Accordingly, we find that this factor is inconclusive.

Conclusion

After considering all the relevant factors, we conclude that employees of Service Contracting, Inc. represented by Northwest Indiana District Council of Carpenters, AFL–CIO, United Brotherhood of Carpenters and Joiners of America are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's preference and current job assignment. In making this determination, we are awarding the work to employees represented by Carpenters, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Service Contracting, Inc. represented by Northwest Indiana District Council of Carpenters, AFL–CIO, United Brotherhood of Carpenters And Joiners of America are entitled to perform the remodeling, including ''replanking,'' of the outdoor bleachers at the Gavitt High School located in Hammond, Indiana.

2. International Association of Bridge, Structural and Ornamental Iron Workers, Local 395 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Service Contracting, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Association of Bridge, Structural and Ornamental Iron Workers, Local 395 shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

[2] The Iron Workers also submitted several decisions of the National Joint Board. These appear to be 8 of the 10 decisions relied on by the arbitrator in the proceeding discussed above. We note that two of the eight decisions are dated differently from those described by the arbitrator in his award. We also note that the arbitrator's decision is dated in 1978, and most of the decisions of the Joint Board are dated in the late 1970s. In regard to the decision introduced by the Carpenters, we note that the Joint Board found ''no basis to change the contractor's assignment'' but the decision does not specify to which union the employer had assigned the work.

[3] The Board places little weight on outdated evidence to establish industry practice. See *Iron Workers Local 401 (William Watts, Inc.)*, 317 NLRB 671, 673 fn. 6 (1995).